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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LOCAL RULES

(Cite as: N.D.W.V. LBR _____ - __)

PART I.

N.D.W.V. LBR 1002-1

Petition - General.

A voluntary or involuntary case is commenced by filing a petition with the Clerk of the Bankruptcy Court together with the required filing fee. A voluntary petition shall conform substantially with Official Form No. 1 of the Bankruptcy Rules and the involuntary petition shall conform substantially with Official Form No. 5. A separate petition must be filed by each entity seeking an order for relief, except in the case of a joint petition being filed by a husband and wife.

The Clerk may refuse to file a corporate bankruptcy petition if the debtor is not represented by an attorney.

Cross Reference

[Cross references are included for the convenience of those using these rules. They are not exhaustive nor should they be considered authoritative.]

Official Forms No. 1 and No. 5
N.D.W.V. LBR 1006-1 (Filing Fees)
N.D.W.V. LBR 1074-1
N.D.W.V. LBR Part V (CM/ECF)
Appendix A (fees)

N.D.W.V. LBR 1006-1

Fees - Installment Payment.

(a) Filing fees for cases filed under Chapter 7, 9, 11, 12, and 13 of the Bankruptcy Code are prescribed by the Judicial Conference and may be found in 28 U.S.C. 1930. Appendix A sets forth the current filing fees.

(b) Applications to pay the filing fee in installments shall be accompanied by an affidavit following Official Form No. 2, pursuant to Bankruptcy Rule 1006(b). Such fee shall be paid in full within four (4) months of the filing, unless otherwise ordered by the Court.

(c) Filing fees may be paid only by cash, certified check, money order, check drawn on an attorney's trust account, or approved credit card, provided that a "Credit Card Authorization" form (Appendix B) has been previously filed with the Court. The Clerk may refuse to accept personal checks and may also refuse to accept a check from any person who is known by the Clerk to have previously presented a check that was subsequently refused for payment.

Cross Reference

28 U.S.C. 1930
Official Form No. 2
Bankruptcy Rule 1006
N.D.W.V. LBR 1002-1
N.D.W.V. LBR 5005-4.02
N.D.W.V. LBR 5080-1
Appendix A
Appendix B

N.D.W.V. LBR 1007-1.

Lists, Schedules & Statements.

In the case of a paper filing of a proceeding under Chapters 7, 12, or 13, the original of the petition and all mandatory support documents (see N.D.W.V. LBR 5005-3) including a mailing matrix in compliance with N.D.W.V. LBR 5005-4.01 and 1007-2 shall be filed.

In the case of a paper filing of a proceeding under Chapters 9 or 11, the original of the petition and all mandatory support documents (see N.D.W.V. LBR 5005-3) including a mailing matrix in compliance with N.D.W.V. LBR 5005-4.01 and 1007-2 together with the number of copies set forth in Appendix M shall be filed.

Cross Reference

Bankruptcy Rule 1007
N.D.W.V. Part V
Official Forms 1, 2, 4, 6, 7 and 8
Appendix M (copies)
Appendix D-1 (addresses)
Appendix D-2

N.D.W.V. LBR 1007-1.01

Deficiencies in Filing Petitions, Schedules, and Statements of Affairs.

The Clerk of the Bankruptcy Court may give notice to the debtor(s) or debtor(s)'s counsel of any material deficiencies in the documents filed, which deficiencies, if not corrected, would impair the performance of the Clerk's duties under the Bankruptcy Code and Rules. Failure to correct the deficiencies noted may be deemed sufficient cause for the Court to dismiss the case.

N.D.W.V. LBR 1007-2

Mailing - List or Matrix.

(a) A petition must be accompanied by a mailing matrix in electronic form in compliance with N.D.W.V. LBR 5005-4.01, which shall minimally include the full names and addresses listed in Appendix D-1 and /or D-2.

(b) The official charged with responsibility for conducting the first meeting of creditors (U.S. Trustee or case trustee) shall inform counsel for the debtor(s) at the Section 341 meeting of any deficiency in the matrix and shall preserve a record of the information so given; counsel for the debtor(s) shall acknowledge that he or she has been informed of such deficiency. Counsel for the debtor(s) shall have continuing responsibility for keeping *the Court* informed of the accuracy of the mailing matrix - creditors' names and addresses.

Cross Reference

N.D.W.V. LBR 5005-4.01
Appendix D-1, D-2

Comment

The importance of the accuracy of the mailing matrix cannot be overemphasized. It is perhaps the single most vital document which is filed. An incorrect address of zip code may well deprive an entity of due process and ultimately lead to great expense, delay, and other hardship. Accuracy of the matrix is the responsibility of counsel for the debtor(s).

N.D.W.V. LBR 1009-1

Amendments to Lists & Schedules.

(a) Fee Required.

An amendment fee as set forth in Appendix A is required if the amendment is filed after mailing of the notice of the first meeting of creditors and the amendment affects the “D”, “E” or “F” schedules, the “Debts” portion of the Chapter 13 Statement, or the matrix.

(b) Verification.

As set forth in N.D.W.V. LBR 9011-4, the amendment shall be verified by the debtor(s).

(c) Certificate of Service.

Amendments to the Schedules must be accompanied by a certificate of service indicating that a copy of the amendment has been served on each party named therein or affected thereby, the trustee, and the examiner, if any. (*See N.D.W.V. LBR 5005-4.10 re: electronic service*)

(d) Amendments to “D”, “E” and “F” Schedules.

Amendments to “D”, “E” and “F” schedules extend the time for objecting to discharge, dischargeability, and the debtor(s)’s claim of exemptions.

The filing of an amendment to add a creditor or change the address of a creditor will operate to extend the times for the new creditors listed to object to the debtor(s)’s claim of exempt property, to dischargeability of a debt, and to discharge by sixty (60) days from filing the amendment. The Court will enter an order rescheduling the discharge and extending the time to object, if necessary.

(e) Amendments to “C” Schedules Extend Time for Objecting to Debtor(s)’s Claim of Exemptions.

The filing of an amendment to the exemption schedule will be deemed a motion to extend the time for objecting to the debtor(s)'s claim of exempt property by thirty (30) days from filing the amendment.

(f) Non-Conforming Amendments.

Amendments which do not conform to these criteria may be refused for filing or returned with file-stamp voided.

Cross Reference

Bankruptcy Rule 1009
Bankruptcy Rule 4003(b)
28 U.S.C. 1930
Appendix A
N.D.W.V. LBR 9011-4
N.D.W.V. LBR 5005-4.10

N.D.W.V. LBR 1015-1

Joint Administration / Consolidation

A party desiring to have two (2) or more bankruptcy cases consolidated procedurally, substantively, or for some other purpose must file a written motion requesting consolidation.

Subsections (a) and / or (b) become applicable after consolidation is granted by the Court.

(a) Procedural consolidation

Cases that are procedurally consolidated are consolidated for noticing purposes only (they will share a joint mailing matrix). The party seeking procedural consolidation shall file a consolidated mailing matrix for each case included in the consolidation within ten (10) days from the date of the order

granting the consolidation.

A pleading, order, or notice which concerns a matter in only one of the procedurally consolidated cases shall be docketed and filed in that case only, but shall reflect the consolidation by stating, in parentheses below the style of the case, “(Procedurally consolidated with Case No. _____)”.

A pleading, order, or notice which concerns a matter in all of the procedurally consolidated cases shall contain the style of the cases and shall reflect the consolidation by stating, in parentheses below the style of the cases, “(Procedurally consolidated)”. Any such pleading, order, or notice shall be accompanied by a sufficient number of copies to be docketed and filed in all of the case files.

(b) Substantive consolidation

Cases are substantively consolidated when all of the requirements of procedural consolidation are met and when the assets and liabilities of the debtors are consolidated. When a case is substantively consolidated, the movant shall file within ten (10) days from the date of the order granting consolidation a mailing matrix for the combined cases. All further pleadings, orders, and notices shall contain the style of the consolidated cases and the style shall reflect the consolidation by stating, in parentheses below the style of the cases, “(Substantively consolidated)”.

(c) Modification of Procedure

The Court may, by administrative order, *sua sponte* or upon a motion of a party, modify the rules and procedures applicable to procedural or substantive consolidation.

Cross Reference

Bankruptcy Rule 1015
Bankruptcy Rule 2009
Bankruptcy Rule 7042

N.D.W.V. LBR 1019-1

Conversion - Procedure Following.

When a Chapter 13 case is either dismissed or converted, the Chapter 13 Standing Trustee shall dispose of the undistributed monies in his or her custody as follows:

(a) if a Chapter 13 plan has been confirmed, the funds shall be distributed to creditors in accordance with the confirmed plan;

(b) if a Chapter 13 plan has not been confirmed, the Standing Trustee shall provide notice to all creditors, including the Chapter 7 trustee if the case has been converted, and unless written objection is made within twenty (20) days of the notice, the trustee shall pay all funds collected to the debtor(s) *directly*.

Cross Reference

*11 U.S.C. 348
Bankruptcy Rule 1017
Bankruptcy Rule 1019*

N.D.W.V. LBR 1070-1

Jurisdiction.

Pursuant to 28 U.S.C. 157, prior orders of the District Court for the Northern District of West Virginia, and further, pursuant to the adoption of these rules by the District Court for the Northern District of West Virginia, any and all cases under title 11 of the United States Code, and any and all proceedings arising under title 11 of said Code, or arising in a case under title 11

of said Code, shall be and hereby are referred to the Bankruptcy Court and bankruptcy judge(s) for this district.

N.D.W.V. LBR 1071-1

Divisions of Bankruptcy Court.

The United States Bankruptcy Court of the Northern District of West Virginia is the proper venue for cases in which the debtor's residence is in one of the thirty-two (32) counties as listed in LR Gen P 1.02(b).

The Northern District of West Virginia includes four (4) divisional offices located in the cities of Wheeling, Clarksburg, Elkins, and Martinsburg. The Bankruptcy Court is not bound by the divisional delineations of the District Court, and will, in the interests of the parties, conduct hearings and other proceedings, including meetings of creditors, at each of the divisional locations whenever feasible.

All pleadings and other papers shall be filed with the Clerk of the Bankruptcy Court at either the Wheeling or Clarksburg division as follows:

U. S. Bankruptcy Court
12th and Chapline St.
Post Office Box 70
Wheeling, WV 26003

U. S. Bankruptcy Court
324 West Main St.
Clarksburg, WV 26301

In addition, the Clerk of the United States District Court for the Northern District of West Virginia, or his or her designee, is authorized to receive and file stamp bankruptcy petitions at the Martinsburg point of holding court in the event of an extreme emergency. Counsel for the debtor(s) shall consult with the District Clerk, or his or her designee, and the District Clerk shall determine whether such emergency

does exist. Counsel for the debtor(s) shall also contact the Bankruptcy Clerk's office (304-233-1655) and notify it of such emergency. Counsel may also wish to consult Part V of these Rules with respect to filing by electronic means.

Cross Reference

Rule 5 Fed. R. Civ. Proc.
Bankruptcy Rule 5005
Bankruptcy Rule 1014 (Change of Venue)
LR Gen P 1.02
N.D.W.V. LBR Part V

N.D.W.V. LBR 1074-1

Corporations.

Any pleading, including, but not limited to petitions, motions, adversary proceedings and answers that are filed by a corporation, must be signed by an attorney as representative of the corporation. Officers or agents of a corporation may sign and file Proofs of Claim without legal representation.

Cross Reference

11 U.S.C. 101(9)

Comment

There are certain limited things which a corporation can do for itself (e.g., file a proof of claim...) At the same time, a corporation is prohibited from appearing in a case and practicing law. See, Rule 9010 of the Bankruptcy Rules, cases such as In re: Las Colinas Development Corp., 585 F.2d 7 (1st Cir. 1978), W. Va. Code Ann. 30-2-5, and cases decided under West Virginia law, such

as Frieson v. Isner, 285 S.E.2d 641 (W.Va. 1981) (collection agency representing third parties).

By this rule, the Court does not wish to discourage a corporation from protecting its rights and, indeed, recognizes the practical considerations with which the corporate entity is confronted. However, this Court is mindful of the policy considerations underlying the subject prohibition and is duty-bound to follow the law.

PART II.

N.D.W.V. LBR 2002-1

Notice to Creditors & Other Interested Parties.

Consistent with the directives of the Administrative Office of the United States Courts and the Office of Audit and Review, the Court may, from time to time, require counsel for an applicant or movant to serve or transmit required notices to all creditors or particular parties in interest.

Cross Reference

Bankruptcy Rule 9007

11 U.S.C. 362, see N.D.W.V. LBR 4001-1

11 U.S.C. 522, see N.D.W.V. LBR 4003-2

11 U.S.C. 722, see N.D.W.V. LBR 6008-1

See generally, N.D.W.V. LBR 9013-1(Notice)

N.D.W.V. LBR 2003-1

Meeting of Creditors & Equity Security Holders.

(a) The United States Trustee shall be responsible for scheduling the date, time and place of the

Section 341 meeting of creditors. The debtor(s) shall be required to attend such meeting and shall bring the following documentation to the meeting:

1. A valid photographic i.d. [List of *acceptable* items from U. S. Trustee *include driver's license, passport, etc.*]
2. An written indicia of debtor(s)'s Social Security Number *or F.E.I.N.*
3. Most recent tax returns (one (1) year for individuals, two (2) years for businesses).
4. For Chapter 13 cases, proof of earnings (e.g., pay stub, W-2, etc.).

In addition to the above, and in order to expedited the administration of the estate, debtor(s) are also requested to bring copies of loan documents, security agreements, certificates of title and outstanding deeds of trust to the Section 341 hearing if they are available.

(b) A joint debtor may be excused from attendance at the meeting provided a Power of Attorney from the absent party to the testifying party is submitted to the trustee indicating good cause for the absence and reciting that the testimony of the absent party would conform to and be consistent with the testimony of the party present and that the party present is given authority to testify on behalf of the absent party.

(c) In the event of extreme life or health endangering circumstances and no alternative means of examining the debtor, including the use of telephonic testimony, the debtor may request that the Court permit the case to proceed without the debtor's attendance at the Section 341 meeting by filing a motion to excuse. Any such motion shall specifically state the circumstances which make the debtor unable to attend the meeting. Representations that a debtor's health prohibits his or her attendance should be verified by a statement signed by the debtor's physician. All such motions must also reflect

that debtor's counsel has contacted the Office of the United States Trustee in an attempt to find an alternate means of examining the debtor.

Cross Reference

11 U.S.C. 341
Bankruptcy Rule 2003
N.D.W.V. LBR 9013-1 (Notice)

N.D.W.V. LBR 2004-1

Depositions & Examinations.

(a) Rule 2004 of the Bankruptcy Rules governs discovery within the bankruptcy case. Upon proper motion, the Court may order that a person appear and be examined.

(b) The proponent of a motion for examination shall attempt to arrange a mutually agreeable time, place and date for the examination and the motion shall reflect the agreement of the parties; if there is such agreement, an order shall be tendered with the motion which likewise reveals the agreed time, place and date of the examination. (See Forms, Appendix C)

(c) In the event that the parties cannot agree on the terms of the examination, a notice of hearing shall accompany the motion and the Court will decide the dispute upon evidence or argument. (See Appendix C-1a, re: contested motion.)

Cross Reference

Rule 45 Fed. R. Civ. Pro.
Bankruptcy Rule 2004
Bankruptcy Rule 9014 (Contested Matters)
Bankruptcy Rule 7001 (Adversary Proceedings)

N.D.W.V. LBR 2020-1

United States Trustees.

Official Bankruptcy Rule 9034 provides a list of pleadings, motions, objections or similar papers that must be served upon the office of the United States Trustee *at the address set forth in Appendix T*, or at such other address as the U. S. Trustee shall designate. In addition to those items set forth in Official Bankruptcy Rule 9034, the following documents should also be served upon the U. S. Trustee's office:

1. Initial operating reports
2. Monthly operating reports
3. Such other documents or information, including electronically formatted information, as the U. S. Trustee may from time to time designate, either generally with respect to all matters, or specifically with respect to an individual case.

Cross Reference

Bankruptcy Rule 9034
Appendix E (Operating Order)

N.D.W.V. LBR 2090-1

Attorneys - Admission to Practice

Admission to practice before this Court by attorneys is governed by LR Gen P 83.01; by

visiting attorneys is governed by LR Gen P 83.02; by *pro se* litigants is governed by LR Gen P 83.03; and by law students is governed by LR Gen P 83.04.

Cross Reference

Rules 8.0 & 10.0 West Virginia Rules for Admission to the
Practice of Law

PART III.

N.D.W.V. LBR 3001-1

Claims and Equity Security Interests - General.

(a) For secured or priority claims in Chapters 7, 9, 11 and 12 cases, the original proof of claim and one duplicate shall be filed with the Clerk's office in accordance with Bankruptcy Rules 3002 - 3005 and 5005. For all other claims in Chapters 7, 9, 11 and 12 cases only an original proof of claim needs to be filed. In Chapter 13 cases, the creditor must file an original and one duplicate for all claims. (See Appendix M, re: copies in general)

To obtain verification of the filing of a proof of claim, one additional copy and a postage paid return envelope must be submitted to the Clerk's office.

(b) If a secured creditor fails to provide the requisite documentation supporting the perfection of the secured claim as required by Federal Bankruptcy Rule 3001, the Chapter 13 trustee is authorized to reserve but not distribute funds to that creditor until the perfection issue is resolved. The secured creditor shall not be entitled to interest during the period it fails to provide the trustee with evidence of

perfection.

(c) In the event a student loan claim (*see 11 U. S. C. 523(a)(8)*) is filed in a Chapter 13 case in which the debtor(s) has (have) failed to acknowledge the student loan obligation, debtor(s)'s counsel shall address the claim as soon as practicable, but no later than three (3) days before the scheduled confirmation hearing. Failure to take action regarding the student loan claim will result in the claim as filed being paid by the Chapter 13 trustee and may result in denial of confirmation and / or dismissal of the petition. Student loan claims not treated expressly by the plan shall be paid with interest at the lesser rate of 9% per annum or the contract rate.

(d) In the event a student loan claim is filed after the governmental unit deadline for the filing of proofs of claims, the Chapter 13 trustee, absent an objection to the claim by the debtor(s), shall pay such claim as filed with interest at the lesser rate of 9% per annum or the contract rate, without having to file a motion to allow the claim.

Cross Reference

11 U.S.C. 501
Bankruptcy Rule 3001
Appendix M

N.D.W.V. LBR 3007-1

Claims - Objections.

(a) A party who files an objection to the allowance of a claim shall file it with the Clerk's office and shall serve a copy of the objection on the creditor filing the claim and on the following:

1. Chapter 7, 12 and 13 cases - Debtor and the *case trustee*

2. Chapter 9 and 11 cases - Debtor in possession and, if applicable, Chapter 11 Trustee, and counsel or chairperson of any creditors' committee.

(b) If the debtor(s) challenge(s) the lien position or obligation of a real estate secured claim, the debtor(s) shall pay to the Chapter 13 trustee the equivalent of adequate protection payments to be held until the adversary proceeding is resolved. The reserved funds shall be distributed pursuant to the terms of the adversary proceeding order.

(c) In a Chapter 13 proceeding, if a claim is filed as secured or priority and the debtor(s)'s plan proposed to treat such claim as unsecured, debtor(s)'s counsel shall address the claim as soon as practicable, but no later than three (3) days before the scheduled confirmation hearing, by filing an objection to the claim, clearly delineating the treatment the debtor(s) believe(s) is appropriate for the claim, amending the plan to provide the appropriate treatment for the claim, or filing a stipulation setting forth an agreed upon treatment of the claim. Failure to take action against the claim results in the claim as filed being paid by the trustee and may result in denial of confirmation and/or dismissal of the petition. Secured claims not treated expressly by the plan shall be paid with interest at the lesser rate of 10% per annum or contract rate, if ascertainable.

Cross Reference

11 U.S.C. 502
Bankruptcy Rule 3007

Comment

Claims are paid based upon the amounts set forth in the Proofs of Claim and not upon the

amounts set forth in the plan. Debtor(s)'s counsel is encouraged to examine the Claims Register maintained by the Clerk and available on PACER or to filing users in the electronic court filing system and to file objections before the confirmation hearing as to those claims with which they are in disagreement.

N.D.W.V. LBR 3012-1

Valuation of Collateral

(a) Absent a showing of extraordinary circumstances to the contrary, the Court accepts as authoritative and dispositive the criteria set forth in Appendix N with respect to the valuation of collateral.

(b) If a Chapter 13 plan calls for a cram down of a secured claim, a motion to value the secured claim, setting forth the debtor(s)'s proposed value, shall be filed before the meeting of creditors. In the event there is a difference between the value of the secured claim as set forth in the plan and in the motion to value the secured claim, the Chapter 13 trustee is authorized to pay the claim at the lower of the two amounts pending entry of an order setting the value of the claim. In the event the motion to value is filed after the meeting of creditors and after distribution to the secured creditor by the trustee pursuant to N.D.W.V. LBR 3015-1(b), and further, if such motion sets a value lower than the amount paid by the trustee at the time valuation is set for the claim, the trustee has no responsibility to seek repayment from the secured creditor for the difference between the set amount of the secured claim and the value set forth in the plan.

N.D.W.V. LBR 3015-1

Chapter 13 Plan.

(a) The Chapter 13 Plan shall substantially comply with the contents of the sample contained in Appendix F.

(b) If sufficient funds are available, as soon as practicable upon the receipt of payments from the debtor(s), the Chapter 13 trustee shall make distribution to secured and priority creditors in at least the amount set forth in the plan. Such preconfirmation payments are subject to the trustee's ordinary and routine fee as an administrative expense. In the event the case is dismissed or converted to another chapter prior to confirmation, the trustee's fee shall be deemed to be an administrative award pursuant to 11 U.S.C. 503(b).

(c) The plan of any debtor(s) with student loan obligations (*see 11 U.S.C. 523(a)(8)*) shall state the treatment of the student loan(s). Student loans shall be paid in full with contract rate of interest unless a hardship discharge order is entered which sets forth a different treatment of the claim. Student loans may be paid directly or through the plan as a special class of unsecured claims. In the event the student loan is not paid in full with post-petition interest through the plan, the plan shall clearly state one of the following options:

1. The debtor(s) is (are) paying the student loan in full directly to the creditor at the contract rate of payment.
2. The debtor(s) is (are) paying the student loan in full directly to the creditor pursuant to an agreement by and between the creditor and the debtor(s).
3. The debtor(s) is (are) deferring payment of the student loan until after the completion of this

plan. The debtor(s) acknowledge(s) that post-petition interest and other charges will be accrued against the student loan obligation and that the amount owed at the end of the case will be more than the amount owed at the beginning of the case.

4. The debtor(s) is (are) treating the student loan as a general unsecured creditor to be paid pro-rata with other unsecured creditors. The debtor(s) acknowledge(s) that post-petition interest and other charges will be accrued against the student loan obligation and the amount owed at the end of the case may be more than the amount owed at the beginning of the case. The student loan creditor will apply payments received in the bankruptcy case first to interest and other charges and then to principal.

Cross Reference

11 U.S.C. 1321, et seq.

Bankruptcy Rule 3015

Appendix F

See: Brunner v. New York State Higher Education Services Corp., (1987, CA2, NY), 831 F2d 395

N.D.W.V. LBR 3015-2

Chapter 13 - Amendments to Plans.

(a) In the event that an amended plan is filed less than two weeks prior to the scheduled confirmation hearing, debtor(s)'s counsel shall file and shall serve on the entire mailing matrix in the case a notice that the scheduled confirmation hearing is continued. Debtor(s)'s counsel shall subsequently notice creditors of the amended plan and the date of the confirmation hearing. In the event debtor(s)'s counsel fails to give notice of the filing of the amended plan and the continuance of the confirmation

hearing, debtor(s)'s counsel may be assessed the costs of the noticing by the Clerk's Office and may be assessed the attorney fees or other fees, as appropriate, for any party who appears for the confirmation hearing without notice of the filing of the amended plan.

(b) After confirmation, if there are substantial changes in the debtor(s)'s situation to require a modification of the debtor(s)'s confirmed plan, debtor(s)'s counsel shall file a motion to modify a confirmed plan, which shall substantially comport with Appendix P. The motion to modify a confirmed plan shall be served on all parties in interest. The Chapter 13 trustee shall, no later than five (5) days prior to the hearing scheduled on the motion to modify the confirmed plan, file a report and recommendation. Any party in interest who objects to the modification of the confirmed plan shall file and serve a written objection on the debtor(s), debtor(s)'s counsel and the trustee no later than five (5) days prior to the scheduled hearing on the motion to modify.

(c) In the event that the taxing authorities file proofs of claim pursuant to 11 U.S.C. §1305, debtor(s)'s counsel shall file an objection to the same or a motion to modify the confirmed plan within thirty (30) days of the filing of the claim. If neither objection nor modification is filed, the trustee shall send notice to the debtor(s) and debtor(s)'s counsel of the amount necessary to increase the plan payments in order to pay the claim in full and not adversely affect the distribution to unsecured creditors pursuant to the terms of the confirmation order. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the plan as confirmed plus the post-petition tax claims. The amount in the notice by the trustee shall be the new plan payment and failure of the debtor(s) to comply with the same may result in the dismissal of the case.

Cross Reference

11 U.S.C. 1305

11 U.S.C. 1323

11 U.S.C. 1329

Bankruptcy Rule 3015

N.D.W.V. LBR 3015-3

Chapter 13 - Confirmation

(a) A written objection to a proposed Chapter 13 plan shall be filed with the Clerk of the Bankruptcy Court with certificate of service thereof on the trustee, debtor(s), and counsel for the debtor(s) within the time set by Court order. If no objection is filed within such time, creditors will be deemed to have accepted the proposed plan and the Court may confirm the proposed plan without further notice to parties in interest.

(b) Confirmation hearings shall be set not sooner than 30 days after the bar date for unsecured claims. Debtor(s)'s counsel shall review the proofs of claims and shall file *any* objections to proofs of claim prior to the scheduled confirmation hearings.

(c) Counsel shall, if necessary, file motions to continue confirmation no later than one week before the scheduled confirmation hearing.

(d) In the event the trustee does not recommend confirmation, but the debtor(s) is (are) willing to comply with the trustee's objections, debtor(s)'s counsel shall advise the trustee in writing no later than noon the Monday before the scheduled confirmation hearing. A letter, which the trustee can attach to an amended recommendation to be filed with the Court, is sufficient. It is not necessary to file an

amended plan if *there are* no creditors *that* are adversely affected.

(e) The Chapter 13 trustee shall, no later than three (3) days before the scheduled confirmation hearing, and sooner if practicable, file a recommendation of confirmation. In the event the trustee recommends confirmation without a hearing, the debtor(s) and debtor(s)'s counsel are excused from attending the confirmation hearing. Other hearings which necessitate the appearance of the debtor(s) and counsel may be scheduled at the same time. The trustee's recommendation does NOT affect the attendance of counsel and the debtor(s) at other matters.

Cross Reference

11 U.S.C. 1325

11 U.S.C. 1327

Bankruptcy Rule 3015

N.D.W.V. LBR 3017-1

Disclosure Statement - Approval.

Unless otherwise ordered by the Court, counsel for the proponent of a disclosure statement and plan shall mail copies of the orders setting hearings on the disclosure statement and confirmation of the plan, along with copies of the necessary related documents, to all parties in interest and shall certify such mailing to the Court within three (3) days of such mailing. (*See N.D.W.V. LBR 5005-4.10 re: electronic service*) Counsel for the proponent shall mail the notice of hearing by using copies of the mailing matrix.

Cross Reference

Bankruptcy Rule 3017

N.D.W.V. LBR 5005-4.10

N.D.W.V. LBR 3018-1

Ballots - Voting On Plans.

(a) Ballots on the plan shall instruct all parties entitled to vote on the plan to submit their ballot directly to counsel for the proponent of the plan.

(b) Unless otherwise ordered by the Court, counsel for the proponent of the plan shall tabulate the ballots, by class, and shall file the original ballots and tabulation with the Clerk of the Bankruptcy Court not less than three (3) working days prior to the hearing on confirmation.

(c) Counsel for the proponent of the plan shall certify to the Court that these rules have been complied with and that all ballots received by the proponent have not been modified and have been properly accounted for in the tabulation. *Such certification may be done electronically.*

(d) Upon request, the Clerk shall make the ballots available for inspection by parties in interest.

(e) Balloting may not be conducted by electronic means.

Cross Reference

Bankruptcy Rule 3017
Bankruptcy Rule 3018
Official Bankruptcy Form 14
N.D.W.V. LBR Part V

N.D.W.V. LBR 3022-1

Final Report / Decree (Ch. 11)

(a) Operating Order - See Appendix E

(b) Closing of Case

Every six months after a Chapter 11 plan has been confirmed, the debtor in possession or trustee shall file a report with the Court and with the U.S. Trustee which describes the debtor's progress toward consummation of the plan. The U.S. Trustee shall review the report and may move to close the case or seek other relief as the circumstances may require.

(c) Post-Confirmation Quarterly Reports.

The order of confirmation may require the debtor in possession or trustee to file quarterly financial reports following confirmation and before consummation of the plan.

Cross Reference

11 U.S.C. 350

11 U.S.C. 1143

Bankruptcy Rule 3022

PART IV.

N.D.W.V. LBR 4001-1

Automatic Stay - Relief From.

(a) Generally

Upon filing of a motion for relief from the automatic stay provisions of 11 U.S.C. 362(a), the Court shall enter an order setting the matter for a preliminary telephonic hearing. The proponent of the motion shall initiate the call. All such motions shall be accompanied by an order granting the relief

requested as set forth in N.D.W.V. LBR 9013-1.

(b) Contents

At a minimum, a motion for relief from stay shall contain the following information and be accompanied by the following exhibits:

1. Information:

- A. Debtor(s)
- B. Secured party
- C. Amount due
- D. Current value
- E. Petition value
- F. Current arrearage
- G. Interest rate

2. Exhibits:

A. Real Estate:

- (1) Address
- (2) Deed - including recording information (copy attached)
- (3) Deed of Trust - including recording information (copy attached)

B. Motor Vehicle:

- (1) Date of loan (copy of loan documents attached)
- (2) Certificate of Title (copy attached)

C. Personal property under UCC:

(1) Loan documents (copy attached)

(2) UCC-1 recording (copy attached)

D. Additional collateral held:

(1) Loan documents (copy attached)

(2) Any indicia of perfection (copy attached)

(c) Notice.

Counsel for the moving party shall serve the motion for relief from stay upon the debtor(s), the debtor(s)'s attorney, the trustee, and any other party which may be affected by the relief sought; notice shall be evidenced by a certificate of service. (*See N.D.W.V. LBR 5005-4.10 re: electronic service*)

(d) Fee.

A filing fee *as set forth in Appendix A* is required under this Rule unless the debtor and creditor agree to relief from the stay and submit an agreed order at the time of the filing of the motion.

(e) Response.

Any opponent of the motion should file and serve a responsive pleading prior to the date of the preliminary hearing.

(f) Preliminary Telephonic Hearing.

1. Participants at the preliminary telephonic hearing shall be counsel for the proponent, the attorney for the debtor(s), and any other party in interest. As set forth in N.D.W.V. LBR 9074-1, the proponent shall initiate the telephonic hearing.

2. The Judge may designate his or her Law Clerk as the Court's representative at the telephonic hearing.

3. If it appears that genuine issues of fact exist between the interested parties, then the telephonic hearing will allow an opportunity to discuss the dispute, set necessary deadlines, and schedule the matter for final hearing. If it appears that only legal issues exist, then the Court will set a briefing schedule.

Cross Reference

11 U.S.C. 362
11 U.S.C. 1301
Rule 16(b) Fed. R. Civ. Pro.
Bankruptcy Rules 4001; 9014
N.D.W.V. LBR 9074-1; 9013-1
Appendix K, Forms K-1, 1a, 1b, & 2,
Appendix A (fees)

N.D.W.V. LBR 4001-3

Obtaining Credit

In the event that a Chapter 13 debtor(s) desire(s) to incur post-petition indebtedness, debtor(s)'s counsel shall file and serve a motion and order to incur post-petition indebtedness substantially in compliance with Appendix Q-1 and Q-2.

Cross Reference

11 U.S.C. 364
Bankruptcy Rule 4001

N.D.W.V. LBR 4002-1

Debtor - Duties

(a) In the event a debtor has a pre-petition cause of action, details of the same shall be communicated to the trustee, and *the case trustee* shall be responsible for filing an application for the employment of counsel for the debtor in the pre-petition cause of action. The debtor and debtor's counsel, whether bankruptcy or non-bankruptcy attorney, shall advise the trustee of any potential settlement or verdict, and counsel shall file the appropriate pleadings with the Court for the approval and distribution of funds. Any funds which are to be paid to the trustee shall be remitted promptly.

(b) In the event a debtor acquires a post-petition cause of action, the debtor shall notify his bankruptcy counsel and the trustee of the cause of action. In a Chapter 13 proceeding or, if deemed property of the estate in a proceeding under another chapter, debtor's counsel shall be responsible for filing an application for the employment of counsel in the post-petition cause of action. The debtor and debtor's counsel, whether bankruptcy or non-bankruptcy attorney, shall advise the trustee of any potential settlement or verdict, and counsel shall file the appropriate pleadings with the Court for the approval and distribution of funds. Any funds which are to be paid to the trustee shall be remitted promptly.

Cross Reference

11 U.S.C. 343

11 U.S.C. 521

Bankruptcy Rule 1007

Bankruptcy Rule 4002

Address of Debtor

In addition to duties of debtor imposed by the Bankruptcy Code and Bankruptcy Rules (See, *inter alia*, 11 U.S.C. 343; 11 U.S.C. 521; Bankruptcy Rules 1007, 4002) debtor(s) and (his, her or their) counsel must notify the Clerk of the Bankruptcy Court, the U.S. Trustee, and, if applicable, the trustee of any change in debtor(s)'s address within ten (10) days of such change. Failure to notify these parties of a change in debtor(s)'s address may result in sanctions, including a dismissal of the petition.

Cross Reference

11 U.S.C. 343

11 U.S.C. 521

Bankruptcy Rules 1007, 4002

N.D.W.V. LBR 4003-2

Lien Avoidance.

A motion to avoid a lien shall, in addition to counsel's signature, be signed and verified by the debtor(s), (*See N.D.W.V. LBR 5005-4.09 re: electronic signatures filing*) and, to be deemed sufficient, shall set forth the following:

(a) Judicial Liens.

1. The market value of the debtor(s)'s real estate, the principal and interest due and owing on all valid and perfected deeds of trust against the subject real estate, and the amount of the exemption claimed by the debtor(s) in the real property;
2. That the holder of the lien sought to be avoided is not an infant or incompetent person; and,

3. That the lien in question was obtained and perfected subsequent to November 6, 1978.

(b) Nonpossessory, nonpurchase-money security interests in household goods, etc.

1. That the lien sought to be avoided is nonpossessory, nonpurchase-money security interest in household goods, etc., which the debtor(s) claimed as exempt in Schedule C;

2. That the holder of the lien sought to be avoided is not an infant or incompetent person; and,

3. That the lien in question was obtained and perfected subsequent to November 6, 1978.

(c) Counsel for the movant(s) shall submit the original and copies for each lienholder of the motion to avoid lien. Upon receipt of said motion and accompanying papers, the Clerk of the Bankruptcy Court shall issue a negative Notice of Motion and Order to the lienholder named in the motion at the address set forth, together with the motion to the creditor(s) affected thereby. Said Notice and Order will provide that the named lienholder shall serve upon the Clerk of the Bankruptcy Court and upon counsel for the movant(s) a written request for a hearing by a time specified in said Notice and Order. In the event that no written request for hearing is filed by the lienholder by the date specified, said Notice and Order shall provide that the relief requested by the movant(s) shall be granted effective as of the date specified in said Notice and Order. In the event the named lienholder shall request a hearing within the time so specified, the motion to avoid lien shall be set for a telephonic prehearing conference.

(d) In the event a Chapter 13 plan proposes a lien avoidance, the appropriate pleading shall be filed before the meeting of creditors. In the event that counsel fails to comply with this rule, and the motion or adversary proceeding remains unfiled as of the date of the filing of the trustee's recommendation regarding confirmation, the Court shall enter an order denying confirmation and the debtor(s) shall file an amended plan with appropriate lien avoidance pleadings within fifteen days of the

entry of the order denying confirmation. Failure to file the amended plan with appropriate lien avoidance pleadings may result in the petition being dismissed.

Cross Reference

11 U.S.C. 522(f)
Bankruptcy Rules 4003(d), 9014
Appendix H, Forms H-1, H-1a, H-2, H-2a
N.D.W.V. LBR 9013-1
N.D.W.V. LBR 9011-4 (signatures)
N.D.W.V. LBR 5005-4.09 (electronic signatures)

N.D.W.V. LBR 4004-2

Objections to Discharge

Objections to discharge shall be filed as an adversary proceeding and must be accompanied by the appropriate cover sheet and filing fee. In general, objections to discharge will be governed by Part VII of these rules.

Cross Reference

11 U.S.C. 523
11 U.S.C. 727
Bankruptcy Rule 4004(d)
N.D.W.V. LBR Part VII (Adversary Proceedings)
Appendix A (fees)

N.D.W.V. LBR 4008-1

Reaffirmations.

(a) Time For Filing - Court Approval Not Required.

To be effective, a reaffirmation agreement must be filed before the discharge is granted. A discharge is granted upon entry of the order of discharge.

(b) Contents of Agreement.

The reaffirmation agreement should include, at a minimum, the following:

1. The amount of the debt reaffirmed;
2. *The interest rate, or, if applicable, the starting rate and variable modification schedule;*
3. The amount of period payment;
4. The number of payments remaining;
5. A statement which reveals that the debtor(s) understand(s) that the agreement may be rescinded prior to entry of the discharge order or within sixty (60) days of filing of the agreement, whichever occurs later.

(c) Court Approval Required.

If the reaffirmation agreement is filed after the discharge order is entered, but before the case is closed, then the debtor(s) must request a hearing for reaffirmation or otherwise proceed as directed by the Court.

(d) Counsel Affidavit / *Pro Se* Debtors

If the debtor(s) is (are) represented by an attorney, the attorney shall file his or her affidavit with the reaffirmation agreement, which affidavit shall reveal that the debtor(s) entered into the agreement voluntarily and after having been fully informed, and that such agreement does not impose an undue hardship upon the debtor(s) or their dependents.

If the debtor(s) was (were) not represented by an attorney during negotiation of the reaffirmation agreement, a hearing shall be held and the Court, at the time of the reaffirmation hearing, shall inquire of the debtor(s) to insure that the agreement was entered into knowingly and voluntarily, that the agreement will not impose a burden upon the debtor(s), is in the best interests of the debtor(s), and that the debtor(s) understand(s) (his, her or their) rights with regard to rescission of the agreement.

Cross Reference

11 U.S.C. 524(c)
Appendix I, Forms I-1, I-2

PART V.

N.D.W.V. LBR 5001-1

Court Administration.

The Court shall be in continuous session for transacting judicial business on all business days throughout the year.

N.D.W.V. LBR 5005-2

Filing Papers - Number of Copies.

Appendix M lists the number of copies to be filed with the original of any document.

Cross Reference.

Appendix M

N.D.W.V. LBR 5005-3

Filing Papers - Size of Papers.

In order to insure uniformity and ease and reliability of creating electronic images from traditional paper documents, any person filing paper documents shall comply with the following requirements:

1. Paper must be of a weight and composition which will allow documents to be readily scanned or imaged to electronic format. Ordinary copy paper of modest cost is sufficient. For example, paper which is coated, bonded, heavy, curled, known as “onionskin”, etc., is not suitable;
2. No paper with text on both sides shall be acceptable (i.e., no “two-sided” pages);
3. Pages of a document shall not be stapled or fastened together (except as by clips or other easily removable devices);
4. Carbon copies shall not be filed;
5. Exhibits shall not be “tabbed”;
6. All pages of a document, including attachments, shall be of letter size (8 ½" x 11") and not 8 ½" x 14".

N.D.W.V. LBR 5005-4

Electronic Filing - Claims Exception.

(a) Consistent with the Federal Rules of Civil Procedure and the Official Bankruptcy Rules, the Court will accept for filing documents submitted, signed or verified by electronic means that otherwise

comply with federal statutes, official rules of procedure and local rules and internal procedures established by the Court.

(b) At the time of the adopting of these rules, claims may not be filed electronically, but must be submitted to the Clerk's Office in paper form, on 8 ½ x 11" paper and one-sided. All claims filed will be scanned and docketed by the Clerk's Office. This rule may be rescinded or modified by order of the Bankruptcy Judge upon the development of procedures for the filing of claims electronically.

Cross Reference

Rule 5(e) Fed. R. Civ. Pro.
Bankruptcy Rule 5005(a)(2)

N.D.W.V. LBR 5005-4.01

Electronic Mailing Matrix.

The mailing matrix for every bankruptcy petition shall be submitted in electronic media form; provided, in the event that the case is filed *pro se*, the Judge, or the Clerk if designated by the Judge, may permit the matrix to be filed in any other form. For purposes of this Rule, "electronic media" shall mean a 3 ½" computer diskette and the document must be saved in the word processor as a .txt file.

Cross Reference

N.D.W.V. LBR 1007-2
Appendix D-1; D-2

N.D.W.V. LBR 5005-4.02

Scope of Electronic Filing and Use of Credit Cards.

(a) Unless exempted by the Court, all cases will be assigned to the electronic case management system. All petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court may be electronically filed by lawyers who have been certified and registered by the Court to participate in the electronic court filing (ECF) system.

(b) Attorneys who elect to file a pleading by electronic means must use the credit card module provided in ECF (see Appendix B) if the document or pleading is one which must be accompanied by a fee, unless other arrangements are authorized by the office of the Clerk acting on behalf of the Judge or his or her designee.

Cross Reference

11 U.S.C. 1930
N.D.W.V. LBR 1002-1
N.D.W.V. LBR 1006-1
Appendix B
Appendix A (fees)

N.D.W.V. LBR 5005-4.03

Eligibility, Registration, Certification, and Passwords.

(a) Attorneys admitted to the bar of this Court, including those admitted *pro hac vice*, may register as filing users of the Court's electronic filing system. Registration is initiated by the Office of the Clerk at the time of certification training and requires the filing user's name, address, telephone number, internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court. Furthermore, in order to become registered, the attorney or *pro se* litigant shall be certified by the Office of the Clerk as having successfully completed a prescribed training course presented by the

Office of the Clerk of this Court or other authorized training program.

(b) If the Court permits, a party to a pending case or proceeding who is not represented by an attorney may register as a filing user in the electronic filing system solely for purposes of the action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a filing user upon the attorney's appearance.

(c) Registration as a filing user constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure.

(d) Once registration is completed, the filing user will receive notification of the user log-in and password. Filing users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

Cross Reference

N.D.W.V. LBR 5005-4.04

N.D.W.V. LBR 5005-4.10

N.D.W.V. LBR 5005-4.04

Consequences of Electronic Filing.

(a) Electronic transmission of a document to the electronic filing system consistent with these rules, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the local rules of this Court;

constitutes entry of the document on the docket kept by the Clerk under the Federal Rules of Civil Procedure and the Official Bankruptcy Rules; and, constitutes service under the Federal Rules of Civil Procedure and the Official Bankruptcy Rules upon those filing users who receive the Notice of Electronic Filing.

(b) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed.

(c) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

Cross Reference

N.D.W.V. LBR 5005-4.10

N.D.W.V. LBR 5005-4.05

Entry of Court Orders Electronically.

Any order entered electronically without the original signature of a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

N.D.W.V. LBR 5005-4.06

Attachments and Exhibits to Electronic Filings.

(a) Filing users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits conventional filing. A filing user may submit as exhibits or attachments only those excerpts of the referenced documents that are directly material to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly material.

(b) Documents electronically filed may not exceed fifty (50) pages in length. For those pleadings and motions, including attachments, exhibits, etc., that exceed fifty (50) pages, filing users shall break up their documents into separate attachments, each of which shall be no more than fifty (50) pages in length.

N.D.W.V. LBR 5005-4.07

Sealed Documents in Electronic Filings.

Documents ordered to be placed under seal must be filed conventionally and not electronically unless specifically authorized by the Court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the Court authorizing the filing of documents under seal may be entered electronically unless prohibited by law.

N.D.W.V. LBR 5005-4.08

Retention Requirements - Electronic Filing

Consistent with the ongoing need to insure reliability and authenticity of the substance of documents filed electronically, and in consideration of other provisions of these Rules, for purposes of preservation of signatures and the substance of legal documents, *filing users may submit a scanned pdf (portable document format) showing the actual signature(s) of the individual(s) executing the documents, or, in the alternative with respect to debtor(s), counsel for the debtor(s) shall keep and maintain an original signed copy of a Declaration Re: Electronic Filing (Appendix R) for a period of seven (7) years from the date that it was filed. The existence of a scanned pdf signature or a properly executed Declaration Re: Electronic Filing (Appendix R) and debtor(s)'s testimony at the Section 341 meeting of creditors are prima facie evidence of the existence, authenticity and validity of the signatures on the original petition, schedules, and statement of affairs. During the period of transition from a paper to a paperless system, counsel are encouraged to retain all originals exhibiting debtor(s)'s or opposing counsel's signatures, but are not required to do so by these rules.*

N.D.W.V. LBR 5005-4.09

Signatures - Electronic Filing.

(a) The user login and password required to submit documents to the electronic filing system serve as the filing user's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Federal Rules of Civil Procedure, Rule 11, Official Bankruptcy Rule 9011, the local rules of the Court, and any other purpose for which a signature is required in connection with

proceedings before the Court. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and the attorney's bar registration number, if applicable. The name of the filing user under whose login and password the document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. In addition, *if debtor(s)'s original petition and schedules are submitted in an electronic form other than a scanned pdf*, debtor(s)'s counsel and debtor(s) must execute a Declaration Re: Electronic Filing in substantial conformity with Appendix R. This Declaration Re: Electronic Filing is subject to the retention requirements of these rules (see N.D.W.V. LBR 5005-4.08).

(b) No filing user or other person may knowingly permit or cause to permit a filing user's password to be used by anyone other than an authorized agent of the filing user.

(c) Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned pdf (portable document format) document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three (3) business days after filing; or (4) in any other manner approved by the Court.

Cross Reference

Rule 11 Fed. R. Civ. Pro.
Bankruptcy Rule 1008
N.D.W.V. LBR 9011-4
N.D.W.V. LBR 5005-4.08 (Retention)
Appendix R.

N.D.W.V. LBR 5005-4.10

Service of Documents by Electronic Means.

(a) Electronic service of the Notice of Electronic Filing by the Clerk to registered filing users constitutes service of the filed document under the Federal Rules of Civil Procedure and the Official Bankruptcy Rules. Accordingly, if the filing party is a filing user and has filed the document or pleading electronically, it is not necessary for the filing party to provide any additional service or to file a certificate of service with respect to those filing users that received the Notice of Electronic Filing from the Clerk.

(b) Parties not deemed to have consented to electronic service are entitled to receive a paper copy of any electronically filed pleading or other document from the filing user. Service of such paper copy must be made according to the Federal Rules of Civil Procedure and the local rules and must be accompanied by the appropriate certificate of service. The certificate of service evidencing delivery of the paper copies to non-filing users may be electronically filed with the initial filing.

(c) Nothing contained herein shall be construed to eliminate the necessity of service of the summons and complaint in accordance with the Federal Rules of Civil Procedure and the Official Bankruptcy Rules. The return of service *may* be filed electronically.

Cross Reference

Rule 4 Fed. R. Civ. Pro.
Rule 5 Fed. R. Civ. Pro.
Bankruptcy Rule 7004
Bankruptcy Rule 7005
LR Gen P 5.01 et seq.
N.D.W.V. LBR 5005-4.04; 5005-4.14

N.D.W.V. LBR 5005-4.11

Electronic Notice of Court Orders and Judgments.

Immediately upon the entry of an order or judgment in an action assigned to the electronic filing system, the Clerk will transmit to filing users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by the Federal Rules of Civil Procedure and the Official Bankruptcy Rules. The Clerk must give notice to a person who has not consented to electronic service in paper form in accordance with the Federal Rules of Civil Procedure.

Cross Reference

Rule 77(d) Fed. R. Civ. Pro.
Bankruptcy Rule 9022

N.D.W.V. LBR 5005-4.12

Technical Failures.

A filing user whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

N.D.W.V. LBR 5005-4.13

Public Access to Electronic Records.

(a) For a fee, any person or organization may access electronically filed records at the Court's internet site by obtaining a PACER login and password at the online site or toll free number set forth in Appendix T. Those who have PACER access but who are not filing users may retrieve docket sheets and documents, but they may not file documents.

(b) In connection with the filing of any material in an action assigned to the electronic filing system, any person may apply by motion for an order limiting electronic access to or prohibiting the electronic filing of certain specifically identified materials on the grounds that such material is subject to privacy interests and that electronic access or electronic filing in the action is likely to prejudice those privacy interests.

(c) Information posted on the system must not be downloaded for uses inconsistent with the privacy requirements of federal law.

N.D.W.V. LBR 5005-4.14

Filing by Facsimile.

Filing by facsimile in this Court shall be governed by LR Gen P 5.01, et seq.

N.D.W.V. LBR 5010-1

Reopening Cases.

(a) A motion to reopen a Chapter 7 or Chapter 13 bankruptcy case for the sole purpose of including one or more creditors that were inadvertently left off of the original petition and matrix shall set forth the name and address of the creditor(s), the reason for the omission, and the amount(s) owed.

The motion shall be accompanied by the appropriate filing fee together with an order and a twenty (20) day negative notice in substantial compliance with Appendices O-1, O-2 and O-3, together with a certificate of service showing delivery of the motion, order and notice to the creditor(s). If a motion to join the reopening and a nondischargeability complaint are filed *by one or more of the added creditors* within the twenty (20) day period, the Court shall conduct a telephonic conference to determine if the order should be entered, reopening is appropriate, or some other relief should be granted.

(b) In all other cases, a motion to reopen a Chapter 7 or Chapter 13 bankruptcy case which has been closed shall include particular grounds supporting the relief sought. Unless otherwise ordered, the required filing fee shall accompany the motion to reopen. Any party affected by reopening of the case shall be served with a copy of the motion and any supporting documents. The motion shall be accompanied by a notice which complies with N.D.W.V. LBR 9013-1.

Cross Reference

11 U.S.C. 350(b)
Bankruptcy Rule 5010
N.D.W.V. LBR 9013-1
Appendices A (Fees); O (Suggested forms)

N.D.W.V. LBR 5071-1

Continuances.

Continuances of hearings and other proceedings may be had only upon written motion served upon all interested parties. The motion shall set forth with particularity the grounds therefore. If applicable, such motion shall be accompanied by an affidavit signed by counsel for the proponent which

signifies that he (she) has orally informed every other party of the motion and contain a statement that there are no objections to the relief sought. Every such motion shall be accompanied by an order granting the relief sought. In order to be entertained by the Court, such motion must have been filed and served prior to five (5) days before the scheduled proceeding, absent extraordinary circumstances. If there are objections to the motion then counsel for the proponent shall arrange a hearing before the Court.

N.D.W.V. LBR 5075-1

Clerk - Delegated Functions Of.

(a) The Clerk of the Bankruptcy Court, or his or her authorized designee, may reject for filing any petition, list, schedules, pleadings, claims or other papers that contain the following deficiencies, except that such rejection by the office of the Clerk may be suspended, altered, or rescinded by the Court for cause shown:

1. Petitions.

- A. Where not accompanied by the proper filing fee or an application to pay in installments.
- B. Where not accompanied by a properly completed mailing matrix.
- C. Where not verified by signature of the attorney or not containing an unsworn declaration with signature of all debtors, or not filed in compliance with N.D.W.V. LBR Part V.
- D. Where two or more individuals are listed, or two or more entities listed, except that

married persons may file joint petitions.

2. Adversary Proceedings.

A. Where not accompanied by the proper filing fee.

3. Claims.

A. Where the claim does not contain the caption of the case or the case number.

B. Where not properly signed by the claimant or an authorized agent.

4. Motions and Other Pleadings

A. Where offered for filing by a corporation or its agent or employee.

(b) Requests for Judicial Review

Where a proponent of a proposed filing objects to any rejection to filing by the Clerk or his or her designee, the proponent may request that the Clerk receive as lodged but not filed the proposed filing. The proponent shall, by written motion, request judicial review by the Court of the rejection and appropriate relief. Such motion for judicial review shall be filed within seventy-two (72) hours of the rejected filing.

Cross Reference

N.D.W.V. LBR Parts V, VII

N.D.W.V. LBR 1074-1 (corp.)

N.D.W.V. LBR 5077-1

Transcripts.

Transcripts of proceedings are available in electronic media through the Clerk's Office.

Requests for transcripts may be made on a form substantially in compliance with Appendix S and should be accompanied by the applicable fee as set forth in Appendix A. The names of court reporters capable of transcribing from the electronic media will be provided by the Clerk upon request.

N.D.W.V. LBR 5080-1

Fees - General.

A filing fee consistent with the fee schedule set forth in Appendix A shall accompany any of the documents set forth on Appendix A, unless, in an adversary proceeding, the plaintiff is the trustee, the United States of America, the Chapter 7 debtor(s), or the Chapter 13 debtor(s). Pursuant to Bankruptcy Rule 1006, filing fees for petitions may, with approval, be paid in installments. Before any other document can be filed, the required filing fee must be paid in full.

Cross Reference

28 U.S.C. 1914
Bankruptcy Rule 1006
Appendix A

PART VI.

N.D.W.V. LBR 6008-1

Redemption.

(a) A Motion to Redeem Tangible Personal Property shall be accompanied by an affidavit

signed by the debtor(s).

(b) Counsel for the debtor(s) shall submit the original and copies for each creditor of the motion for redemption and accompanying affidavit. Upon receipt of said motion and sufficient affidavit, the Clerk of the Bankruptcy Court shall issue a negative Notice of Motion and Order to the creditor named in the motion at the address set forth in said motion. Said Notice and Order will provide that the named creditor shall serve upon the Clerk of the Bankruptcy Court and upon counsel for the debtor(s) a written request for a hearing by a date specified in said Notice and Order. In the event that no written request for hearing is filed by any creditor by the date specified, the Bankruptcy Judge shall enter the order granting the motion to redeem. In the event a creditor does request a hearing, the motion for redemption shall be set for a telephonic prehearing conference.

No action will be taken on the motion for redemption until the affidavit is received.

Cross Reference

11 U.S.C. 722
Bankruptcy Rule 6008
Bankruptcy Rule 9014
Appendix J, Form J-1, J-2, J-3
N.D.W.V. LBR 9013-1

PART VII.

N.D.W.V. LBR 7001-1

Adversary Proceedings - General.

Adversary proceedings are governed by Parts VII and IX of the Bankruptcy Rules. The Federal Rules of Civil Procedure and the District Court Local Rules shall apply to all adversary proceedings unless expressly modified by Part VII of the Bankruptcy Rules or as supplemented by these Local Rules.

Cross Reference

Bankruptcy Rule 7001

N.D.W.V. LBR 7003-1

Cover Sheet.

All complaints initiating adversary proceedings shall be accompanied by a fully completed Bankruptcy Cover Sheet (Form BC 104), containing a complete summary of the adversary proceeding as required thereon.

Cross Reference

See generally, Part VII, Bankruptcy Rules

N.D.W.V. LBR 7004-2

Summons.

Upon receipt of the complaint, the Clerk shall prepare a summons which shall include the time, date, and place of the pretrial conference and transmit such summons to counsel for the plaintiff for service as required by law. Upon service of the complaint and summons, counsel shall file a conformed copy of the summons indicating proof of service.

Counsel for the plaintiff shall initiate the conference call.

Cross Reference

N.D.W.V. LBR 9074-1

N.D.W.V. LBR 7026-1

Discovery - General.

Discovery shall be conducted in accordance with LR Civ P 26.01, et seq.; Bankruptcy Rule 7001, et seq.; the Federal Rules of Civil Procedure where made applicable by the Bankruptcy Rules; and these rules.

Cross Reference

N.D.W.V. LBR 2004-1

N.D.W.V. LBR 7054-1

Costs - Taxation/Payment.

The judgment creditor is entitled to interest from the date of the entry of the judgment. The interest shall be calculated at a rate equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of fifty-two (52) week United States Treasury bills settled immediately prior to the date of the judgment.

N.D.W.V. LBR 7055-1

Default - Failure to Prosecute.

In any pending adversary proceeding when it appears to the Court that the principal issues have been adjudicated, or have become moot, or that the parties have shown no manifest interest in further prosecution of the action, the Court may direct the Clerk to give written notice, by United States mail, *or electronic means where applicable*, to counsel of record that the action will be dismissed thirty (30) days from and after the date of the notice unless good cause for its nondismissal is shown. In the absence of good cause shown within such period of time, the Court may dismiss the action. The Clerk shall mail an attested copy of any order of dismissal to counsel of record.

Cross Reference

Rule 41 Fed. R. Civ. Pro.
Bankruptcy Rule 7041
LR Civ P 41.01

N.D.W.V. LBR 7069-1.01

Praeipce - Judgment - Payment Of.

To obtain the following post-judgment remedies, a judgment creditor must file with the Clerk of the Bankruptcy Court a written request (praeipce) for the relief sought.

N.D.W.V. LBR 7069-1.02

Writ of Execution.

Unless otherwise ordered by the Court, a writ of execution cannot be issued until ten (10) days after the entry of the judgment order. A writ of execution cannot be issued if the judgment debtor(s) has (have) obtained a stay pending appeal from the Court and posted a supersedeas bond in the

amount set by the Court. No bond is required for an appeal taken by the United States or an agency thereof.

A writ of execution shall be made returnable not less than thirty (30) days nor more than ninety (90) days after issuance. The praecipe should indicate the return date desired by the judgment creditor. The party requesting the writ must furnish the Clerk with a completed U.S. Marshal's Process Receipt and Return Form 285.

Cross Reference

Appendix L, Form L-1

N.D.W.V. LBR 7069-1.03

Abstract of Execution.

Upon application in writing (praecipe) by the judgment creditor, a Clerk of the Bankruptcy Court may issue an abstract of execution for filing with a Clerk of the County Commission.

N.D.W.V. LBR 7069-1.04

Suggestion.

A suggestion can be issued only after a writ of execution has been issued (or at the same time if both are forwarded to the United States Marshal). The judgment creditor must provide the Bankruptcy Clerk with a completed suggestion with summons, U.S. Marshal's Form 285, and a notice of possibility of exemptions, if required, which is served by the Clerk on the judgment debtor(s) via certified mail.

Cross Reference

N.D.W.V. LBR 7069-1.05

Suggestee Execution.

A suggestee execution will be issued by the Bankruptcy Clerk after receiving from the judgment creditor a completed suggestee execution, affidavit for suggestee execution, notice of possibility of exemptions, if required, and U.S. Marshal's Form 285. The notice of possibility of exemptions is served on the debtor(s) by the Clerk via certified mail.

The amount contained in the affidavit for suggestee execution can be less than the amount contained in the judgment order, but never more. Renewal of a suggestee execution must be requested and issued prior to the expiration of the one-year period for which it was originally issued.

Cross Reference

Appendix L, Forms L-3, L-4, L-5, L-6, L-7

N.D.W.V. LBR 7069-1.06

Abstract of Judgment.

Upon application in writing (praecipe) by the judgment creditor, the Clerk of the Bankruptcy Court may issue an abstract of judgment any time after entry of the judgment order.

Cross Reference

Appendix L, Form L-8

N.D.W.V. LBR 7069-1.07

Writ of Possession.

The Bankruptcy Clerk may issue a writ of possession only upon order of the Court.

N.D.W.V. LBR 7069-1.08

Certification of Judgment for Registration in Another District.

(a) Issuance: Upon request and payment of the prescribed fee, the Bankruptcy Clerk will complete the Certification of Judgment Form and forward it along with a certified copy of the judgment order to the requesting party. It is the responsibility of the requesting party to forward the certification of judgment form with a certified copy of the judgment order to the Bankruptcy Clerk of the District in which the party desires to register the judgment.

(b) Filing: Upon receipt of a proper certification of judgment for registration in another district and the proper filing fee, the Bankruptcy Clerk will create a main case docket card and assign it a miscellaneous case number.

Cross Reference

Appendix L, Form L-9

PART VIII.

N.D.W.V. LBR 8001-1

Notice of Appeal.

The Bankruptcy Clerk shall serve notice of the filing of a Notice of Appeal by mailing copies to counsel of record and the office of the U. S. Trustee. Sufficient copies of the notice must be provided by the appellant to the Clerk for that purpose. The Notice of Appeal shall be accompanied by the required filing and docketing fees.

Cross Reference

Bankruptcy Rules 8001; 8002; 8004
Official Bankruptcy Form 17
Appendix A (Fees)

N.D.W.V. LBR 8006-1

Designation of Record - Appeal.

The designation of record shall give the docket number and an abbreviated description of the docket entry for each item being designated. Any party filing a designation of items to be included in the record shall provide to the Clerk a copy of the items designated or, if the party fails to provide the copy, the Clerk shall prepare the copy at the expense of the party. A copy of a designation of record and statement of issues shall be served by the appellant *on the* appellee, *and*, if applicable, on the United States Trustee.

Cross Reference

F.R.App.P. 10
F.R.App.P. 11
Bankruptcy Rule 8006

PART IX.

N.D.W.V. LBR 9004-2

Caption - Papers, General.

(a) The style on an adversary pleading shall comply with Official Form 16C of the Official Bankruptcy Rules.

(b) *Objections, replies, or other pleadings in response to a specific pleading or document should reference the docket number of the pleading or document to which it is in response in the title of the objection, reply, or other pleading. [e.g., Creditor's Objection to Debtor's Motion No. (docket number) , to (description of Debtor's motion)]*

N.D.W.V. LBR 9006-1

Time Periods.

Each party to an action may obtain stipulated extensions of time not to exceed a total of twenty (20) days in which to file motions or responsive pleadings. This may be done by filing with the Clerk a written stipulation between the parties for such extension, provided, that the aggregate time for all extensions by stipulation during the action shall not exceed a total of twenty (20) days. A stipulation filed with the Clerk shall affirmatively state that no prior stipulated extensions to that party, together with the stipulated extension then filed, exceed a total of twenty (20) days. Neither the stipulation nor any entry to that effect need to be submitted to the Court for such extensions. If no such stipulation is obtained, or if additional extensions beyond the stipulated period are requested, the party desiring an

extension must move the Court for the additional extension within the original or extended response time.

N.D.W.V. BR 9011-4

Signatures.

All petitions, lists, schedules, statements and amendments shall be verified or contain an unsworn declaration pursuant to Bankruptcy Rule 1008.

Cross Reference

Rule 11 Fed. R. Civ. Pro.
Bankruptcy Rule 1008
Official Form 2
N.D.W.V. LBR 1009-1
N.D.W.V. LBR 5005-4.09

N.D.W.V. LBR 9013-1

Motion Practice.

(a) Motion and Application Practice in the Main Bankruptcy Case.

Motion and application practice in the main bankruptcy case are governed principally by Rules 5 and 7 of the Federal Rules of Civil Procedure and, among others, Rule 9013 of the Bankruptcy Rules. Particular attention should be paid to the notice / service provisions required by law.

(b) Motion and Application Practice in Adversary Proceedings.

Motion and application practice in adversary proceedings are governed principally by Rules 5

and 7 or the Federal Rules of Civil Procedure and the comparable Rules 7005 and 7007 of the Bankruptcy Rules.

(c) Papers to Accompany Motions and Applications.

Each motion or application shall be accompanied, when appropriate, by the following papers *or their electronic equivalents*:

1. Order — In appropriate circumstances, a proposed form of order which, if entered by the Court, would grant the relief sought by the motion. Such orders should not bear the engraved or printed firm name;

2. Notice

A. Telephonic - sets forth with particularity the nature of the pleading and relief sought and which provides that: "...a telephonic hearing with the Court will be initiated by the Movant at ____ o'clock, ____m., on the ____ day of _____, 20____." (See Appendix G-1) The movant or applicant may obtain a time and date from the Court Clerk prior to preparing the notice and submit the completed notice for service by the Clerk; or,

B. Negative notice - sets forth with particularity the nature of the pleading and relief sought and which provides that: "...an order may be entered granting the relief sought unless a specific written objection is filed within ____ (__) days of the date of the mailing of this notice" (See Appendix G-2)

C. The Clerk's Office generates most notices of hearing on routine motions and applications. However, a movant must prepare a notice for the following:

1. Motion to Compromise - twenty (20) day negative notice [See Bankruptcy Rule 2002(a); N.D.W.V. LBR 9019-1]
2. Proposed Use, Sale or Lease of Property - twenty (20) day negative notice [See Bankruptcy Rules 2002(a), 2002(c)]
3. Motion to Sell Free and Clear of Liens and Other Interests Pursuant to Bankruptcy Rule 6004(c) - Twenty (20) day negative notice [See Bankruptcy Rule 2002(c)]
4. Motion for Redemption - Twenty (20) day negative notice. [See N.D.W.V. LBR 6008-1]
5. Motion to Avoid Lien - Twenty (20) day negative notice. [See N.D.W.V. LBR 4003-2]
6. Motion to Reopen [See N.D.W.V. LBR 5010-1; Appendix O]

3. Certificate of Service — The notice provisions of the Federal Rules of Civil Procedure, the Bankruptcy Rules and these Local Rules are neither intended to supersede, nor to be a substitute for, the requirement that pleadings and orders be served upon the interested parties, provided that if the entire creditor body is served, the certificate of service may recite service on “...all creditors listed on the mailing matrix on file in the Bankruptcy Clerk’s Office as of (date).”. A certificate of service shall be utilized when required. (*See N.D.W.V. LBR 5005-4.10 re: electronic service*)

Cross Reference

Rule 5 Fed. R. Civ. Pro.
Rule 7 Fed. R. Civ. Pro.
Bankruptcy Rule 2002

Bankruptcy Rule 9013
Bankruptcy Rule 7005
Bankruptcy Rule 7007
N.D.W.V. LBR Part IX; See also Part V (Electronic)
Appendices G, O

N.D.W.V. LBR 9019-1

Settlements and Agreed Orders.

In the event that the parties to an adversary proceeding which effects property of the estate compromise their positions and settle their differences, counsel for the plaintiff(s) shall prepare a negative notice which allows a twenty (20) day objection period and which sets forth the terms and conditions of the proposed settlement; counsel shall tender such notice to the Clerk of the Bankruptcy Court for his or her signature and transmittal to all creditors and other parties in interest. In addition, counsel for the plaintiff(s) shall submit an agreed judgment order for consideration by the Bankruptcy Court.

Cross Reference

Bankruptcy Rule 2002(a)
N.D.W.V. LBR 9013-1

N.D.W.V. LBR 9029-1

Local Rules - Effective Date.

By Order entered on the _____ day of _____, 2003, these Rules were adopted by the Judges of this District and became effective thirty (30) days after entry thereof.

N.D.W.V. LBR 9029-1.01

Scope and Construction of Rules.

(a) These rules govern practice and procedure in the United States Bankruptcy Court for the Northern District of West Virginia. The rules shall govern all proceedings, including proceedings under Part VII of the Bankruptcy Rules, and Bankruptcy Rule 9014, in all cases filed after the effective date and in all further proceedings in cases pending on the effective date, unless otherwise specifically ordered by the Court.

(b) These rules, and any form which may be provided herein, shall be construed in a manner consistent with the United States “Bankruptcy Rules and Official Forms” and with the local rules adopted by the District Court.

(c) These rules shall be construed to achieve an orderly administration of the business of this Court; to govern the practice of attorneys before this Court; to secure the just, speedy, and inexpensive determination of cases; and to promote consistency in the practice of this Court alone, together with consistency of practice in this Court, and sister courts within the United States Bankruptcy System, and the United States District Court for the Northern District of West Virginia.

N.D.W.V. LBR 9029-2

Local Rules - General Orders

Prior to the effective date of these rules, local practice and procedure were governed by entry of various general orders. The effective general orders of this Court have been incorporated in these rules and by adoption of the rules, all general orders of the Court inconsistent with these rules on the

date of adoption are rescinded; provided, general orders may be entered which govern internal office practices or the duties and responsibilities of Court personnel and panel trustees, or as a means of adding to, altering, or discontinuing procedural aspects of these rules not in conformity with then current practice and until these rules can be further amended; and provided further, that the judge of the Bankruptcy Court may make corrections, additions, deletions or modifications with respect to the Appendices of these rules at any time.

Cross Reference

Bankruptcy Rule 9029

N.D.W.V. LBR 9072-1

Orders - Proposed.

Unless otherwise ordered by the Court, the party prevailing at any hearing or trial shall submit to the Court an order conforming to the Court's decision not later than five (5) working days following the hearing or trial. The use of telephone or other authorization not requiring counsel's actual signature is permitted, but the preferred method of insuring accuracy of the order is to obtain the written endorsement of counsel for any party in interest. Pursuant to Part V of these rules, orders may be submitted electronically. If submission is electronic, counsel for the prevailing party may maintain the original order with written endorsement in compliance with N.D.W.V. LBR 5005-4.08

Cross Reference

N.D.W.V. LBR 9013-1

N.D.W.V. LBR Part V

N.D.W.V. LBR 9074-1

Telephone Conferences.

For the convenience of the attorneys, the litigants, and the Court and in the interest of cost and efficiency, wherever practicable the Court will conduct conferences and hearings by telephone. The Clerk shall give notice of the time and date of such telephonic conferences or hearings together with the names of the participants. Unless otherwise directed, it shall be the duty of the proponent of a motion, application, or other request to initiate such telephonic conference.

Cross Reference

N.D.W.V. LBR 9013-1